IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CRMPM No.241 of 2007

Decided on: April 20, 2007

Anil Kumar **.....Applicant.**

VERSUS

State of H.P. **.....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Petitioner : **Mr. Atul Jhingan, Advocate.**

For the respondent : **Mr. Ashok Chaudhary, Additional Advocate General.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Applicant, alongwith two other persons, has been booked for offences under Sections 302, 376, 392 IPC and Section 25 of the Arms Act.

3. As per Police version, a young woman was having illicit relations with deceased Rajesh. She was also having similar relations with one of the co-accused of the applicant, named Sanjay Rana. On 19th August, 2006, the deceased got in touch with the lady on telephone and suggested her to see him at Barara (in Yamunanagar District of Haryana) in the evening. The two met around 9 in the night. Deceased offered that they travelled by his car to Paonta Sahib. Thereafter, the two left Barara. On the way, at one point, the forest barrier was closed. The deceased felt tired and told the lady that they could take rest at a lonely place for some time. So,

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Whether the reporters of the local papers may be allowed to see the judgment?

they went in the car to look for some lonely place. In the meanwhile, three young men came from the opposite direction on a motorcycle. They were the applicant and his two accomplices. Initially, the motorcycle crossed the car. When the car was stopped by the deceased for taking rest, the motorcycle came from behind. It overtook the car and stopped at a short distance. The applicant and his two accomplices alighted from the motorcycle and went to the site where the car was parked. They opened the front windows of the car and pulled out the deceased. They required the deceased to handover whatever money or other valuables he had with him. Thereafter, one of them took out a country made pistol from his pocket and fired two shots aiming the head of the deceased. Rajesh died on the spot. The applicant and his two accomplices then threw the dead body on one side of the road. Two of them alongwith the lady travelled by the car and one of them followed them on the motorcycle. They went to a *Katcha* road where the lady was gang-raped by all of them. Purse of the deceased was found in the dash-board of the car, which was taken away by the applicant and/or his accomplices. There was money in that purse. All this happened on the night intervening 19th and 20th August, 2006.

4. Dead body was spotted on 22nd August, 2006. Police was informed telephonically by the Pradhan of the Panchayat, within the area of which the dead body was spotted. Since deceased Rajesh did not return, his parents, who live in Sangrur town of Punjab State, started searching for him. They telephonically contacted the lady, as they came to know from a friend of deceased that he (deceased) was having illicit relations with her. The lady called them

to her place on 22nd August, 2006. She was prepared to give all the details to them, but the parents of the deceased brought with them the Police from Barara, Sangrur and Ambala and started hurling abuses at her. She was taken to Police Station Barara. When she was at the Police Station, a telephonic call was received from Police Station Paonta Sahib, within the jurisdiction of which dead body had been found. The caller informed that a dead body had been spotted. The lady was then taken to Police Station Paonta Sahib. There she made a statement on 26th August, 2006 giving all the aforesaid details of the incident.

5. The applicant has sought his release on bail by invoking the jurisdiction of this Court, under Section 439 Cr.P.C. Earlier, he approached the learned Sessions Judge under the same provision for grant of bail. The learned Sessions Judge has rejected his bail plea.

6. Learned counsel for the applicant submits that the applicant is not named as the person who fired the shots killing the deceased on the spot. It is true that the lady has not named the person, who fired the shots which proved fatal, but the fact remains that per statements of the lady, which she made to the Police, under Section 161 Cr.P.C., as also to the Magistrate, under Section 164 Cr.P.C., the applicant and his two accomplices followed the deceased and the lady on the motorcycle and one of them was armed with a country made pistol. The deceased was pulled out of his car. He was commanded to handover all the valuable items he had with him and then he was shot twice in the head by one of them. The dead body was thrown in the forest. The lady was taken to a

lonely place where she was gang-raped. From the facts and the circumstances of the case, it appears that the applicant and his accomplices committed the crime in a premeditated manner. In any case, all of them are accused of gang-rape by the lady.

7. Looking to the seriousness of the crime, I do not think the applicant deserves to be released on bail. Hence, the application is dismissed.

April 20, 2007(sd) **(Surjit Singh), J.**